

# **FREEDOM OF INFORMATION HANDBOOK**

Compiled by: Office of the General Counsel

Western Area Power Administration

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## **GENERAL STATEMENTS**

The Freedom Of Information Act (FOIA), 5 U.S.C. 552, generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions. The basic purpose of the FOIA is to ensure an informed citizenry, which is vital to the functioning of a democratic society. The more the American people know about their Government the better they will be governed. Openness in Government is essential to accountability and the Act has become an integral part of that process.

Society's strong interest in an open Government can conflict with other important interests such as the public's interest in the effective and efficient operations of Government; in the prudent governmental use of limited fiscal resources; and in the preservation of the confidentiality of sensitive personal, commercial, and governmental information. The resolution of these conflicts lies in a workable formula that balances and protects all interests, placing emphasis on the most responsible public disclosure possible.

If the Government cannot release information, it has the burden of providing how the release of the information in question would have adverse consequences. This burden cannot be met with mere conclusive statements.

Any portion of a record that can be reasonably segregated and is not so intertwined with exempted material to render separation extremely impractical must be provided to a requester. When a document or a partial document is withheld, a reasonably informative description of the withheld information must be given to allow a requester the opportunity for a meaningful appeal. A list of the particular exemption(s) under which the document is withheld with a brief explanation of how the exemption applies, including why a discretionary release is not appropriate if this action is taken will be given.

## **FOIA REQUEST OVERVIEW**

### **I. FOIA REQUESTS:**

#### **A. Elements of a Request Letter:**

1. A request letter must contain a reasonable record description that is good enough so that a person knowledgeable about the record could locate it.

If a request is unclear or it encompasses a large volume of material that the requester may not really need, the requester will be contacted in order to narrow and define the focus of the request.

2. The letter must be addressed to the appropriate office, therefore a "Make FOIA Request" button to send your request has been added for your convenience.
3. A requester must make an assumption of financial liability:
  - a. before submitting your request, enter the U.S. dollar amount that you are willing to pay for your request. If a large fee is anticipated, an advance payment may be requested.
  - b. if you feel that a fee waiver is applicable, explain why. The requester must present enough information for a FOIA officer to determine if a waiver should be granted or not under criteria explained in this document.
4. Records must be in existence:
  - a. an agency is not required to "create" a record. The request must ask for an existing record.

#### **B. Definitions:**

1. Definition of an Individual

Individuals include partnerships, corporations, associations, and public or private organizations other than an agency.

## 2. Reasonableness/Request Sufficiency

A request is sufficient if it enables a professional employee of the agency who is familiar with the subject area of the request to locate the record with a reasonable amount of effort.

## 3. Expedition of FOIA Requests

If a person's life, freedom, or ability to avoid deportation is not in the balance, the Department generally does not find cause to expedite processing. The requester must have no ability or opportunity to influence or control urgent events.

# II. AGENCY RESPONSE:

## A. The Elements of Drafting a Response:

1. An acknowledgment letter will be sent out to the requester upon receipt of a request.
2. A determination will be made whether a record will be released, in whole or part and the requester will be notified of the determination to grant, deny, or grant and deny in part.
3. A search for the requested records will be made to determine if a record is available and if it is a public record and generally available in a reading room or public library, the record need not be produced.
4. A notification of charges for the request will be made if it will amount to more than \$25.00.
  - a. DOE allows that all requests under \$25 for duplicating and search fees are free. If the cost is over \$25, the WHOLE amount is charged.
5. If any records are to be withheld, the exemption for withholding information and an explanation will be given.
6. If your request is denied, an explanation as to the reasons for the denial include a private document, a trade secret, etc. The explanation will be cited in reference to the appropriate exemption.
7. The requester will be notified of the right to appeal a denial.

8. The name and title of persons responsible for the denial will be provided.
9. The requested records will be sent within 10 working days of the request, or if not possible, a statement as to the date it is expected that the records will be released.

B. Adequacy of a Search:

1. FOIA requires an agency's search for records be reasonable. The standard of "reasonableness" which we apply to agency search procedures does not require absolute exhaustion of files; instead, it requires a search reasonably calculated to uncover the sought materials.

C. Responding to an Inadequate Request:

1. A response must specify the reasons why the request failed to meet the requirements.
2. A response must enable the requester an opportunity to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to a manageable size.

D. Disclosure Limits - Creation of Documents:

1. FOIA is limited to the disclosure of certain documents which the law requires the agency to prepare or which the agency has decided to create for its own reasons. FOIA does not require compilation or creation of a record for the purpose of satisfying a request for those records.

E. Employees Duty to Answer Questions:

1. An agency is not required to respond to questions by requesters. The FOIA only requires the granting of nonexempt Government documents.

## **FOIA EXEMPTIONS**

5 U.S.C. 552 exempts nine categories of documents, and provides that any reasonably segregated nonexempt portion of a record will be provided to requester. DOE will delete portions of the documents withheld under the exemptions listed below:

- I. EXEMPTION ONE: Classified Documents**
- II. EXEMPTION TWO: Internal Agency Personnel Rules and Regulations**
- III. EXEMPTION THREE: Information Exempt Under Other Laws**
- IV. EXEMPTION FOUR: Confidential Business Information**
- V. EXEMPTION FIVE: Internal Government Communications**
- VI. EXEMPTION SIX: Personal Privacy**
- VII. EXEMPTION SEVEN: Law Enforcement**
- VIII. EXEMPTION EIGHT: Financial Institution**
- IX. EXEMPTION NINE: Geological Information**

## **FEE SCHEDULE**

### **I. FEES TO BE CHARGED**

#### **A. Manual Searches**

- 1. Salary of employee conducting search;
- 2. plus an additional 16 percent.

#### **B. Computer Searches**

- 1. Direct costs charges for computer time:
  - a. Programming per/hour \$ 17
  - b. Key punching/per 1,000 card usage \$ 183
  - c. Duplication per/hour \$ 45

- d. Computer time per/quarter hour \$219
- C. Actual Review
  - 1. Charge for time in examining possible exceptions;
  - 2. no charge if appeal brought on initial decision;
  - 3. if appeal granted, may charge for subsequent review to discover alternative applicable exemption.
- D. Duplication of Records - Charge per page or medium
  - 1. paper-to-paper per page \$ .05
  - 2. microfilm-to-paper per page \$ .10
  - 3. 100-ft. roll, 35mm microfilm per roll \$7.00
  - 4. 100-ft. roll, 16mm microfilm per roll \$6.00
- E. Other Special Charges
  - 1. Special services performed at agency's discretion.
- F. Restrictions on Fee Assessment
  - 1. If not for commercial use -
    - a. first 100 total pages of duplication free;
    - b. first 2 hrs of search time free (manual or computer equivalent).
- G. Notification of Changes to Requester
  - 1. If estimate is more than \$25.00 in charges, the requester will be notified unless previous agreement is established.
- H. Waiving or Reducing Fees
  - 1. At the discretion of the Agency, fees may either be waived or released if the release/disclosure is determined to be within public interest and determined by two requirements:

- a. Disclosure of requested information is within public interest because it will aid public understanding of Government action:
  - (1) Requested subject concerns operations or activities of the Government;
  - (2) informative value, is information likely to contribute to understanding Government operations/activities;
  - (3) general public understanding likely to result from disclosure;
  - (4) significance of public understanding, is disclosure likely to significantly contribute to public understanding.
- b. Disclosure is NOT in the primary interests of a commercial requester:
  - (1) Does requester have commercial interests that would be furthered by disclosure;
  - (2) if so, is commercial request large compared to public interest disclosure;
    - if either of the above are answered yes, it is in the primary interest of a commercial requester.

#### I. Fee Waivers and News Media Categorization

- 1. "A representative of the news media, is in essence, a person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." If requester claims a waiver because disclosure will significantly contribute to the public's understanding of operations/activities of the Government, he/she has the burden of proof once a contrary determination is made.

## II. CATEGORIES OF REQUESTERS AND MISCELLANEOUS INFORMATION

### A. Categories of Requesters

- 1. Commercial Use Requesters:



- a. All incurred costs billed;
  - b. no 2-hr. free search time or 100 free copied pages.
- 2. Educational and Noncommercial Scientific Institution Requesters:
  - a. Cost of reproduction only after first 100 pages;
  - b. must have authorization of educational/scientific institution.
- 3. News Media:
  - a. Costs of reproduction only after first 100 pages;
  - b. must not be for a commercial use.
- 4. All Others:
  - a. If a requester does not fall within any of the above categories, fees will be assessed resulting from direct costs of search and reproduction. The first 2-hrs. and/or 100 pages are exempt.

B. Charging Interest - Notice and Rate

- 1. If requesters fail to pay, interest will be assessed on the 31st day following the date that the bill is sent. Interest will accrue and the rate is set per 31 U.S.C. 3717.

C. Unsuccessful Searches

- 1. Charges will be assessed for time spent, even though no documents are found, or documents found are exempt from disclosure and, therefore, not released.

D. Aggregating Requests

- 1. The requester may not file multiple requests seeking part of a document solely to avoid charges;
- 2. If fraud is suspected, DOE will aggregate the requests and charge accordingly;
- 3. DOE may not aggregate multiple requests on unrelated subject matter.

E. Advance Payments will be required if:

1. The estimated charge is more than \$25. A requester in good standing will be notified of the charge for their request. If a requester is not in good standing, the requester must advance the payment before the request will be processed.
2. A requester has previously failed to pay a fee within 30 days. The requester must pay any past due account plus interest and must advance estimated costs of current request.